

ISSUES

The Administrative Law Judge denied claimant's request for benefits for the reason that claimant had failed to prove that she made timely written claim. The claimant requests the Appeals Board review that finding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, and for purposes of preliminary hearing, the Appeals Board finds, as follows:

For the reasons expressed below, claimant has presented sufficient evidence to establish that it is more probably true than not that her claim is timely and she is entitled benefits under the Kansas Workers Compensation Act.

Claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent when she fell at work on July 25, 1991. Claimant provided respondent timely notice of accident and was provided authorized medical treatment with Dr. Thomas M. Jensen. The evidence is uncontroverted that Dr. Jensen was authorized, and did, treat claimant from July 1991 through January 1993. On January 27, 1993, claimant received an epidural injection as a result of a referral from Dr. Jensen. On May 3, 1993, Dr. Jensen provided claimant with a prescription which she filled. By affidavit, Dr. Jensen testified that the prescription was related to treatment of the injuries claimant sustained in her work related accident of July 1991.

The parties represent that the respondent did not file its report of accident with the Director of the Division of Workers Compensation as required by K.S.A. 44-557. The version of K.S.A. 44-557(c), pertinent to this date of accident provides:

"No limitation of time in the workmen's compensation act shall begin to run unless a report of the accident as provided in this section has been filed at the office of the Director if the injured employee has given notice of accident as provided by K.S.A. 44-520 and amendments thereto, except that any proceeding for compensation for any such injury or death, where report of the accident has not been filed, must be commenced before the Director within one (1) year from the date of accident, suspension of payment of disability compensation, the day of the last medical treatment authorized by the employer, or the death of such employee referred to in K.S.A. 44-520a and amendment thereto."

As claimant provided proper notice of accident and respondent failed to file its report of accident with the Director, claimant had one (1) year from the date of the last medical treatment to commence her proceeding. The Appeals Board finds that Dr. Jensen provided medical treatment to claimant when he provided her with a drug prescription on May 3, 1993. The Appeals Board also finds that claimant filed her Form E-1, Application for Hearing, with the Director of the Division of Workers Compensation on March 16, 1994. Therefore, claimant has commenced her proceeding within one year from the date of last medical treatment and her proceeding is timely.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant's proceeding is timely and that the preliminary decision of Administrative Law Judge Robert H. Foerschler dated July 15, 1994, should be, and hereby is, reversed and that claimant, for preliminary hearing purposes, has established timely claim; that this proceeding is hereby remanded for further proceedings consistent with this finding as the parties may require.

IT IS SO ORDERED.

Dated this ____ day of October, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Robert H. Foerschler, Administrative Law Judge
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